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June 25, 1996

Office of the Secretary
Federal Communications Commission
1919 M. Street, N.W.
Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

VIA OVERNIGHT MAIL

Re: Pay Telephone Rulemaking
CC Docket No. 96-128
FCC No. 96-254
Comments of Michigan Pay Telephone Association

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2 6 1996
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Dear Sir/Madam:

Enclosed for filing please find the original and 14 copies of the Comments of Michigan Pay Telephone Association in the above-referenced matter. Also enclosed is a floppy diskette with the comments provided in WP for Windows 5.1 (MPTA.WPW), Word Perfect for DOS 5.1 (MPTA.WP5), and in standard text (MPTA.TXT).

Thank you for your assistance in this matter.

Warmest regards.

Very truly yours,

BUTZEL LONG

William R. Ralls

WRR/kms
Enclosures
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and 1 floppy diskette

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

2 6 1996

In the Matter of)
)
Implementation of the)
Pay Telephone Reclassification)
and Compensation Provisions of the)
Telecommunications Act of 1996)

CC Docket No. 96-128
FCC No. 96-254

COMMENTS OF MICHIGAN PAY TELEPHONE ASSOCIATION AS TO PART III(A)(2)(a) OF NOTICE OF PROPOSED RULEMAKING

Respectfully submitted,

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Dated: June 25, 1996

TABLE OF CONTENTS

SUMMARY

These comments are presented by the Michigan Pay Telephone Association ("MPTA"), a nonprofit incorporated trade association representing the interests of independent payphone service providers in Michigan. The MPTA files these comments in opposition to the Commission's consideration of setting a nationwide local coin rate for all calls originated from payphones, as addressed in ¶ 21 of the NPRM.

MPTA opposes the concept of a nationwide rate for several reasons as set forth in these comments. These reasons include:

1. Neither the Act nor the Conference Report authorize a nationwide coin rate. The Act was designed to end the discrimination against independent payphones, and to replace the current regulatory system with a per call compensation system. This was aimed at compensating PSPs for calls for which independent providers have not been fairly compensated but for which BOC payphone providers have been fairly compensated: in particular carrier access code calls and subscriber 800 calls. The Act was not designed to authorize a nationwide rate for local calls placed from payphones.

2. Costs of local calls vary from region to region and from state to state. If the Commission sets a nationwide rate, providers in some states may reap a

windfall, while providers in other states may be forced to charge below cost. The Commission should recognize that costs of providing local calls are predominantly local, not national, and reject the concept of a nationwide rate.

3. A nationwide rate for local calls will conflict with Congress's goal to eliminate BOC subsidies of their payphones. If the nationwide rate is set at a level that does not cover the BOC's cost, the BOC is effectively forced by the nationwide rate to subsidize its local payphone calls. The Commission should address the greater evil -- LEC subsidization -- and allow local rates to vary.

4. Setting a nationwide rate gives LECs power over independents. LECs provide the local service to the payphones operated by independents. If a nationwide rate prevents the LEC and the independent from raising the coin rate, the LEC simply raises the local service rate to the independent and subsidizes its own local payphone calls. This results in a price squeeze.

5. States are better equipped to decide local calling rates than any national body. The costs of PSPs are based on local labor and property costs, and on local tax levels. Moreover, local entities can better deal with regional economic peaks and valleys. States may also experiment with letting the market set the rate, which has been successful in Michigan.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 2055

In the Matter of	)	
	)	
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Pay Telephone Reclassification	)	
and Compensation Provisions of the	)	
Telecommunications Act of 1996	)	

COMMENTS OF MICHIGAN PAY TELEPHONE ASSOCIATION AS TO PART III(A)(2)(a) OF NOTICE OF PROPOSED RULEMAKING

1. Introduction

The Telecommunications Act of 1996 addresses the interests of the payphone industry and the public interest in payphones at Section 276, codified at 47 USC § 276. One of the primary impacts of § 276, as referenced in ¶ 1 of the Notice of Proposed Rulemaking, is to direct the Commission to "ensure that all payphone owners are compensated for calls originated on their payphones, and to 'discontinue ... all intrastate and interstate' subsidies for payphones owned by incumbent local exchange carriers ('LECs')."

On June 6, 1996, the Commission issued its Notice of Proposed Rulemaking in this matter to accomplish these two primary purposes. The Michigan Pay Telephone Association ("MPTA") agrees with both goals, and supports efforts to set payphone compensation. However, MPTA strongly opposes one of the alternatives set forth in ¶ 21: setting a nationwide local coin rate for all calls originated by payphones. These comments will be focused on this one issue.

2. Description of Michigan Pay Telephone Association

The Michigan Pay Telephone Association ("MPTA") is an incorporated nonprofit association of business owners that own and operate pay telephones within the State of Michigan. Members of the MPTA own or operate a majority of the independent payphones in Michigan, and these payphone owners will be most widely affected by the action the Commission takes in this proceeding.

3. Comments of Michigan Pay Telephone Association

MPTA's comments, as indicated in the Introduction, are concerned with the consideration by the Commission of setting a nationwide local coin rate. These comments address part III(A)(2)(a) of the Notice of Proposed Rulemaking ("NPRM"), and specifically paragraphs 15, 16, 17, 19, 20, 21, and 22.

Paragraphs 15 and 16 indicate that the Commission is interested in whether payphone service providers ("PSPs") are "fairly compensated for all calls originated by their payphones." The types of calls originated by the PSPs' payphones are described as: 1) coin calls, 2) directory assistance calls, 3) operator service ("0+ and 0-" calls), 4) access code calls (using *e.g.*, "10XXX" codes and "1-800" or "950" carrier access numbers), and 5) subscriber 800 calls.

At ¶ 20, the NPRM indicates that § 276 of the Act requires the Commission to ensure that PSPs receive fair compensation for each interstate and intrastate call. The Commission goes beyond the language of the Act by then interpreting that to include local coin sent-paid calls. Then, at ¶ 21, the Commission requests comments on an option of setting a nationwide local coin rate. At ¶ 22, the Commission seeks comments on an alternative for the states to continue to set the coin rates for local payphone calls.

A. The Act Did Not Contemplate or Authorize a Nationwide Coin Rate

Paragraph 20 of the NPRM states that "Section 276 of the Act requires the Commission to ensure that the payphone provider receives fair compensation for each interstate and intrastate call, including local coin sent-paid calls", citing § 276 b(1)(A). Section 276 b(1)(A), however, states:

> "(A) establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation."

The language "including local coin sent-paid calls" is not included in the Act, but is added by the Commission in the NPRM This presumes that Congress intended the per call compensation plan to apply to local coin calls. A look at the statute and the Conference Report indicates no such intent.

The above section only directs the Commission to establish a per call compensation plan to ensure fair compensation. There is no indication in the statute or in the Conference Report that a nationwide local coin rate was to be established. Rather, the focus was on addressing access code and subscriber 800 calls where the PSPs have historically not been compensated. Coin sent-paid calls are, by definition, compensated calls. The intent of the Act was not to take away from the states their traditional authority to set rates for local calls from payphones (where the states choose to exercise that authority). It would have been assumed that a state regulatory body setting "just and reasonable" rates would be providing for "fair compensation." The intent of the Act was instead to provide a plan for compensation where PSPs have not collected compensation on a per call basis.

At ¶ 10 of the NPRM, the Commission acknowledges that in its *Second Report and Order* it adopted interstate compensation on a per phone basis, but stated that a per-call compensation was preferable. In using the phrase "establish a per call compensation plan", Congress was simply using the same language the Commission had used in its compensation cases and no more. Congress was adopting the concept already put forward by the Commission earlier in adopting a per call rather than a per phone or other basis for compensation, with emphasis on access code and subscriber 800 calls. Congress did not intend to usurp the authority of the states in setting prices for local calls.

This position is also supported by a reading of the Conference Report.[1] When discussing the reasons behind § 276, which came largely from the House amendment, the Conference Report concerns itself primarily with eliminating discrimination between BOC and independent payphones and all subsidies or cost recovery for BOC payphones from regulated interstate or intrastate exchange or exchange access revenue. In so doing, the Conference Report states:

> In place of the existing regulatory structure, the Commission is directed to establish a new system whereby all payphone service providers are fairly compensated for every interstate and intrastate call made using their payphones, including, for example, "toll-free" calls to subscribers to 800 and new 888 services and calls dialed by means of carrier access codes.

The purpose of what became § 276, as stated in the Conference Report, is to eliminate all discrimination between BOC and independent payphones and all subsidies or cost recovery for BOC payphones, and to replace the existing regulatory

[1] S. Conf. Rep No. 104-230, 104th Cong., 2d Session (1996) ("Conference Report").

structure with a new per call system where all payphone providers are fairly compensated for payphone calls, with specific reference to subscriber 800 and carrier access code calls. No mention is made for local coin sent paid calls, where both LEC payphone providers and independent payphone providers are already collecting revenue.

The silence is telling. There simply was no Congressional intent to authorize a nationwide local coin rate for payphones. Had a nationwide rate been intended, it is likely that such a drastic change in national policy would have been mentioned in the Conference Report. It was not mentioned because it was not contemplated. The Commission should follow the intent expressed in the Conference Report and in the statutory language to provide a per call compensation for access code and subscriber 800 calls, and decline to set a nationwide local coin rate.

B. A Nationwide Coin Rate Would Ignore the Variation of Costs of Local Calls Throughout the Country

At ¶ 22, the NPRM acknowledges the significant state interest in setting local call rates. The NPRM, however, seems to discount that significant interest by asking for comments on what other procedures are needed. This presumes more regulation is needed, when the reality is that less regulation is needed. The only concern with fair compensation would seem to be that states may set a local calling rate that is too low for the geographic area involved. The cure for that would seem to be relaxed or reduced regulation of such rates at the local level in light of the current competitive market. The cure is not to establish a nationwide rate.

Unlike interLATA calls, which use national and international networks, local calls are, by definition, local in nature. The primary costs are related to costs of local loops and usage of local switches and other equipment. Those costs vary from state to state and region to region much more than the costs of interLATA toll calls. For example, it has been reported that, in Texas, the cost of a local call exceeds 39 cents.[2] Those costs may be much higher or much lower in other regions. In addition, the line charges charged by LECs to PSPs vary from state to state and region to region. A nationwide rate that is fairly compensatory in one state may produce a windfall in another state and a loss of money in yet another state.

Rate regulation was set up long ago to balance the need to recover one's costs with providing a fair rate to a monopoly consumer. A nationwide rate provides none of the protection of monopoly (other than preventing a competitor from charging less for a local call) with the very real possibility of a confiscatorily low rate.

The move of the future in telecommunications is competition. It is one thing to prescribe a per call rate for access code calls and subscriber 800 calls when the

[2] *Perspectives of Public Communication*, American Public Communications Council, May 1996, p. 11.

alternative is to require the provider of service to provide the service without compensation. However, local sent paid calls are compensated, and the states either set those rates or allow the market to set the rates. A nationwide rate takes away any semblance of competition from the picture. If the costs of providing a local call are lower in the area than the nationwide rate, there is no incentive for the provider to cut costs because nobody will be able to charge less from a competing payphone. If costs of providing a local call are higher in the area than in the nationwide rate, PSPs will not be able to stay in business, and the state's payphone users will end up supporting more and more public interest payphones. If the Commission sets the rate at the highest level of costs of local calls, those PSPs in regions with lower costs will reap a windfall at the expense of the general public.

The Commission should recognize that costs of providing local calls are predominantly local, not national, and reject the concept of a nationwide rate.

C. A Nationwide Coin Rate Would Conflict With The Intent of the Act To End Subsidization of Payphones By LECs

As the Commission itself has recognized in the opening paragraph of the NPRM, the primary intent of Congress was to both ensure fair compensation and to discontinue subsidies for LEC payphones. A nationwide coin rate will not accomplish either objective.

The previous argument establishes that the cost of a local call varies from region to region. Consider for the sake of argument the following simplified example. Costs of 39 cents per local call have been reported in Texas. Further assume for the sake of argument that the cost of a local coin call in Oregon is 30 cents, the cost in Nebraska 37 cents, and the cost in Chicago 30 cents. The average cost in those states would be nearly 35 cents. If the Commission set a nationwide rate at 35 cents, the LECs operating payphones in Texas and Nebraska would be forced to sell local calls below cost or without a profit, thereby depriving these providers of fair compensation for use of their payphones. Further, as a result of the nationwide, not only are LECs in Texas and Nebraska not prevented from subsidizing local calls, the LECs in those states are required to subsidize local calls. From the standpoint of avoiding subsidization of LEC payphones, a nationwide local rate would accomplish just the opposite.

The better path is to let the local rates vary throughout the country, and concentrate on preventing LEC subsidization of payphones.

D. A Nationwide Coin Rate Would Allow LECs to Exert a Price Squeeze on Independent PSPs

By setting a nationwide rate, the Commission would lock in for the long term one rate that all PSPs would have to follow. This ignores the fact that all PSPs are not equal.

The LECs are in the position of providing not only end user payphone service; the LECs also provide local service connections to independent payphone providers. When local service costs go up over time in a region, as they undoubtedly will, the LECs will be able to raise their local rates to the independent payphone providers. However, the independent providers will not be able to raise their local payphone rates to end users because that rate would be a national rate which the provider may not be able to change (the factors that raise costs in a region may not be considered justification to increase the nationwide rate) The result is a price squeeze. The LEC can subsidize its local coin calls to stay in business (it would be forced to because it could not change the national rate either), but the independent cannot because it lacks a local service customer base. The independent must eat the price increase for its local service without the luxury of local service ratepayers. The result will be an unfair advantage to LECs, who could use the price squeeze to drive out competition from the independents, thereby raising the possibility of a return to a monopoly environment in the payphone industry.

Similarly, the need for public interest payphones will also increase in a spiralling fashion. Public interest payphones will only have to be provided in areas where there are no payphones.[3] If costs increase and LEC imposed local connection charges increase, payphones are less likely to make money and will be removed from what are now marginally profitable locations. Yet those same locations may have enough demand or may be in a location deemed desirable for a public interest payphone. If the public interest payphones are paid for by PSPs, then PSPs' costs will again increase, and even more marginally profitable payphones will be removed, with even more public interest payphones required, exacerbating the problem.

Moreover, if the nationwide rate is set too low for the provider to recover costs, the provider will provide fewer payphones in marginal areas. The resulting lack of available payphones will cause end users to be more likely to switch to wireless systems. With more potential payphone customers switching to wireless systems, there will be even less demand for payphone use in those areas, thereby further reducing the number of available payphones for those users unable to afford basic local service or wireless alternatives. These persons are also left without a resource for emergency situations, which will further exacerbate the need for public interest payphones.

[3] See ¶ 80.

Thus, the nationwide rate will allow LECs to squeeze independent providers in the long run, and will decrease the ability of providers to provide payphone service in marginally profitable areas, and will needlessly exacerbate the need for public interest payphones. The Commission should reject a nationwide rate as being against the public interest.

E. The Better Policy is to Let the Market Set the Price of Local Calls

1) The States Are Better Equipped To Decide Local Calling Rates

As the Commission indicated at ¶ 22, the states have a significant interest in setting local call rates. There is good reason for this significant interest. Not only do some residents use payphones for local telephone service, as well as being used by visitors and retail customers, but the local environment is more conducive to providing fair compensation for local calls The calls begin and end on a local network. The costs of providers are based on local labor and property costs, and on local tax rates. The basis for a nationwide rate is that one size fits all. But clearly one size does not fit all where costs and economics are involved. Economic conditions are often regional rather than national. For example, at present in Michigan unemployment is very low, and economic conditions are such that small businesses must pay wages at a higher rate to attract workers than they may have to pay in other regions. A nationwide rate would not allow these businesses to reflect premium wage rates in their end user rates.

In addition, one region may be primarily urban with small incremental costs to reach a new area with a payphone, while another area may be primarily rural with considerable cost to put in and operate payphones. The local governments are closer to those problems, and the authority for setting local calling rates should remain at the local level. The best mechanism is to require that the price of a local call, at a minimum, cover the total service long run incremental cost of providing that call.

2) Market Rates: The Michigan Experience

Not mentioned in the NPRM is the concept of not having a rate set at all. Yet in Michigan that has been the case historically with independent payphone service providers. When the consumer knows the price in advance of completing the call, the market sets the price. For example, despite the lack of historical price regulation in Michigan, independent payphone service providers have on average charged less than the LEC for coin calls. That is a strong and accurate indicator of what competition can do.

The market is a stronger indicator than regulation as long as there is competition. Competition will flourish so long as the LECs are not allowed to subsidize payphone service. Given effective safeguards against subsidization, and given effective provisions for compensation for access code and subscriber 800 calls, the market will allow PSPs to receive fair compensation for local calls. No nationwide rate is necessary.

4. Conclusion

In summary, a nationwide rate for local calls was not contemplated by Congress and should be rejected. Moreover, a nationwide rate is not needed. Indeed, a nationwide rate would be counterproductive and would lead to windfalls in some regions and confiscatory rates in other regions. A nationwide rate would force subsidization by LECs of local calls, and allow LECs to exert a price squeeze against independent providers, results that are the exact opposite of Congress's intent. The better approach is to let the states, who are closer to the situation, or the market, set local call rates, while the Commission concentrates on preventing subsidization and providing the compensation Congress did intend: compensation for access code and subscriber 800 calls.

Respectfully submitted,

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Dated: June 25, 1996

Attachment A

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This page has been substituted for one of the following:

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